

## **IC 14-26-5**

### **Chapter 5. Lowering of Ten Acre Lakes**

#### **IC 14-26-5-1**

##### **Applicability of chapter**

Sec. 1. This chapter applies to freshwater lakes having an area of at least ten (10) acres.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-2**

##### **"Normal water level of a lake" defined**

Sec. 2. As used in this chapter, "normal water level of a lake" means:

- (1) the water level of the lake established by law; or
- (2) if the water level has not been established, the level where the presence and action of the water has been so constant as to give to the bed of the lake a character distinct from that of the surrounding land with regard to vegetation and the nature of the soil.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-3**

##### **Permit required for certain work on ditches and drains; exception**

Sec. 3. (a) This section does not apply to a ditch or drain if:

- (1) water from the ditch or drain empties into a lake before activities referred to in subsection (b) begin;
- (2) water from the ditch or drain continues to empty into the lake at the same location after the activities are completed; and
- (3) the activities are conducted using best management practices for soil and erosion control.

(b) A person may not:

- (1) locate, make, dig, dredge, construct, reconstruct, repair, or reclean; or
- (2) order or recommend the location, establishment, construction, reconstruction, repair, or recleaning of;

a ditch or drain having a bottom depth lower than the normal water level of a lake within one-half (1/2) mile of the lake without a permit from the department.

*As added by P.L.1-1995, SEC.19. Amended by P.L.28-2007, SEC.1.*

#### **IC 14-26-5-4**

##### **Permits; request**

Sec. 4. A request for a permit may be made by any person interested in the proposed work by filing with the department the following:

- (1) A brief statement and description of the work.
- (2) Plans and specifications for the work.
- (3) An investigation fee of twenty-five dollars (\$25).

*As added by P.L.1-1995, SEC.19.*

**IC 14-26-5-5****Permits; investigation upon request**

Sec. 5. The department shall promptly consider a request by making an investigation of the land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.

*As added by P.L.1-1995, SEC.19.*

**IC 14-26-5-6****Permits; issuance**

Sec. 6. If the department finds that the proposed work will not:

(1) endanger:

(A) the legally established water level of a lake; or

(B) the normal water level of a lake whose water level has not been legally established; or

(2) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources;

the department shall promptly grant the request and issue a permit to the person requesting the permit.

*As added by P.L.1-1995, SEC.19.*

**IC 14-26-5-7****Safeguards**

Sec. 7. If the department finds that the proposed work could be done provided certain safeguards are included in the proposed work, the department shall designate the safeguards that will in the department's opinion protect the lake.

*As added by P.L.1-1995, SEC.19.*

**IC 14-26-5-7.4****Time requirements for approval or refusal of permit request**

Sec. 7.4. If a request for a permit is submitted under this chapter by or for a county drainage board for a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27, the department shall approve or refuse the request within one hundred fifty (150) calendar days after the request is deemed complete by the department. A request held more than one hundred fifty (150) calendar days by the department without being either approved or refused shall be considered approved.

*As added by P.L.180-1995, SEC.2.*

**IC 14-26-5-7.6****Refusal of permit request; notice and hearing**

Sec. 7.6. (a) If the department refuses to issue a permit after an investigation under section 5 of this chapter, the department shall promptly cause a public notice to be given by one (1) publication in a newspaper of general circulation published in the county in which the lake or any part of the lake is located. The notice must state that, on the date set forth in the notice, which may not be less than ten (10) days after the publication, at a designated place in the county, the department will hold a hearing on the request, and any interested

person appearing at the hearing will have the right to be heard. The notice must contain a brief description of the proposed work and a statement of the department's reasons for refusing to issue a permit and of the safeguards, if any, that the department considers necessary to protect the water level of the lake. The hearing shall be held by the director of the department or by the director's designee. A hearing held under this subsection is a nonevidentiary hearing. The rules of evidence and IC 4-21.5 do not apply to the hearing.

(b) If the request of a county drainage board for a permit for a project for the reconstruction and maintenance of a regulated drain under IC 36-9-27 is refused, the department shall publish the public notice required by subsection (a) within sixty (60) days after the permit is refused.

*As added by P.L.180-1995, SEC.3.*

#### **IC 14-26-5-8**

##### **Permits; expiration**

Sec. 8. A permit issued under this chapter expires two (2) years after the permit is issued.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-9**

##### **Permits, posting, keeping**

Sec. 9. The person to whom a permit is issued under this chapter shall do the following:

- (1) Post the permit at the site of the activity authorized by the permit.
- (2) Keep the permit posted at the site where the activity is authorized until the activity is completed.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-10**

##### **Complaints; filing**

Sec. 10. (a) Except as provided in subsection (b), a person, firm, limited liability company, or corporation that is adversely affected by a decision of the department may appeal the decision by filing a complaint in the circuit or superior court of the county in which the lake or a part of the lake is situated.

(b) If the proposed work is the work petitioned for in a pending drainage proceeding, the complaint:

- (1) must be filed in the court in which the drainage proceeding is pending; and
- (2) shall be heard and determined as part of the drainage proceeding.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-11**

##### **Complaints; contents**

Sec. 11. A complaint must do the following:

- (1) State the interest of the person filing the appeal, whether the

person is:

- (A) proposing to construct, reconstruct, repair, or reclean a ditch or drain on the person's own land; or
- (B) a petitioner or other party or public officer in a pending drainage proceeding.
- (2) Set forth the plans and specifications of the proposed work.
- (3) State the action taken by the department in granting or withholding approval.
- (4) State the objections and causes of appeal from the decision of the department.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-12**

##### **Complaints; service of summons**

Sec. 12. A complaint must be filed in the court within thirty (30) days from the date of the decision of the department by causing summons to be issued and served upon the director as summons are served in other civil cases.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-13**

##### **Intervention in proceedings**

Sec. 13. Any person, firm, limited liability company, or corporation interested in or affected by the proposed work may intervene in the proceedings before the court.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-14**

##### **Court to hear evidence de novo**

Sec. 14. The court shall hear de novo all evidence relevant to the issues determined by the department.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-15**

##### **Appeals**

Sec. 15. An appeal may be had from the finding and judgment of the court as provided by law in other civil cases.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-16**

##### **Injunctive relief**

Sec. 16. A person, firm, limited liability company, or corporation that violates or threatens to violate this chapter is subject to an injunction upon a complaint filed by any of the following:

- (1) Any person whose land or interest in land may be damaged by the violation.
- (2) The department.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-5-17**

**Violations**

Sec. 17. A person who knowingly violates section 3 of this chapter commits a Class B infraction.

*As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.8.*